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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-732*

13 **MELISSA MARY MONTELEONE, aka**
14 **MELISSA MARY KUSHMAUL**
15 **10482 Hart Avenue**
Huntington Woods, Michigan 48070

A C C U S A T I O N

16 **Registered Nurse License No. 389635**
Nurse Anesthetist Certificate No. 3358

17 Respondent.

18
19 Louise R. Bailey, M.Ed., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the Executive
22 Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

23 **Registered Nurse License**

24 2. On or about August 31, 1985, the Board issued Registered Nurse License Number
25 389635 to Melissa Mary Monteleone, also known as Melissa Mary Kushmaul ("Respondent").

26 3. On or about March 23, 2006, the Board issued to Respondent Nurse Anesthetist
27 Certificate Number 3358 to Respondent.
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4. The Registered Nurse License and Nurse Anesthetist Certificate were in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

JURISDICTION

5. Business and Professions Code (“Code”) section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

6. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

7. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

8. Code section 2761 provides, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

COST RECOVERY

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **CAUSE FOR DISCIPLINE**

2 **(Out-of-State Discipline)**

3 10. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a)(4),
4 on the grounds of unprofessional conduct, as follows:

5 a. Effective November 3, 2011, the State of Michigan Department of Licensing and
6 Regulatory Affairs, Bureau of Health Professions, Board of Nursing, in a disciplinary action
7 entitled *In the Matter of Melissa Mary Monteleone, R.N., C.R.N.A., License No. 47-04-160940*,
8 issued a *Consent Order and Stipulation* (attached hereto as **Exhibit A** and incorporated herein by
9 reference) summary suspending Respondent's license to practice professional nursing in the State
10 of Michigan for a minimum of six months and one day, with terms and conditions. The basis of
11 such action was Respondent's alcohol related convictions.

12 b. Effective December 22, 2011, the State of Florida Board of Nursing, in a disciplinary
13 action entitled *Department of Health vs. Melissa Mary Monteleone*, issued a *Final Order Case*
14 *No. 2011-01286* (attached hereto as **Exhibit B** and incorporated herein by reference) accepted
15 Respondent's voluntary surrender of license RN 9168163 to practice professional nursing in the
16 State of Florida.

17 **PRAYER**

18 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board of Registered Nursing issue a decision:

20 1. Revoking or suspending Registered Nurse License Number 389635, issued to Melissa
21 Mary Monteleone, also known as Melissa Mary Kushmaul;

22 2. Revoking or suspending Nurse Anesthetist Certificate Number 3358, issued to
23 Melissa Mary Monteleone, also known as Melissa Mary Kushmaul;

24 3. Ordering Melissa Mary Monteleone, also known as Melissa Mary Kushmaul, to pay
25 the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this
26 case, pursuant to Code section 125.3; and,

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4. Taking such other and further action as deemed necessary and proper.

DATED: MARCH 11, 2013
for Stacie Ben
LOUISE R. BAILEY, M.ED., R.N.
Executive Officer
Board of Registered Nursing
State of California
Complainant

SA2012107166
accusation.rtf

Exhibit A

Consent Order and Stipulation

State of Michigan

Department of Licensing and Regulatory Affairs

Bureau of Health Professions

Board of Nursing

STATE OF MICHIGAN
DEPARTMENT OF COMMERCE
BUREAU OF OCCUPATIONAL AND PROFESSIONAL REGULATION
BOARD OF NURSING

In the Matter of

MELISSA MARY KUSHMAUL, R.N.

CONSENT ORDER AND STIPULATION

CONSENT ORDER

WHEREAS, an administrative complaint was filed with this Board on March 8, 1990, charging Melissa Mary Kushmaul, R.N., hereafter Respondent, with having violated section 16221 (a), (b)(i), (b)(ii), (b)(iii) and (c)(iv) of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq; and

WHEREAS, Respondent has admitted by stipulation submitted herewith that the facts alleged in the aforesaid complaint are true and constitute violation of the Public Health Code, supra, as set forth in said complaint; and

WHEREAS, the Board has reviewed said stipulation and, based upon the matters asserted therein, agrees that the public interest is best served by resolution of the outstanding complaint; now, therefore,

IT IS HEREBY FOUND that the allegations of fact set forth in the aforesaid complaint are true and constitute violation of the Public Health Code, supra, as set forth in said complaint.

Accordingly,

IT IS HEREBY ORDERED that for each of the aforesaid violations of the Public Health Code, supra, Respondent shall be and hereby is placed on PROBATION for a period of one (1) year commencing on the effective date of this order. Said periods of probation shall run

concurrently. The terms and conditions of said probation are as follows:

A. Respondent shall continue the aftercare treatment program with the Henry Ford Hospital, Oxford Institute. Oxford Institute shall submit to the Board quarterly reports indicating the number and frequency of Respondent's visits, Respondent's mental condition and ability to practice the health profession with reasonable skill and safety to patients, and shall include an evaluation and statement as to whether Respondent suffers from substance abuse and/or any mental or physical inability reasonably related to and adversely affecting the ability to practice in a safe and competent manner. The initial report shall be submitted to the Board at the end of the third month of probation, and subsequent reports shall be submitted every third month thereafter until Respondent is released from treatment or the period of probation is terminated, whichever first occurs. If, however, at any time said Oxford Institute finds that Respondent has a mental or physical disability which rendered Respondent unable to practice the profession with reasonable skill and safety to patients, said Oxford Institute shall immediately submit a report to the Board which shall include such findings and related information.

B. Respondent's employer, who shall be provided with a copy of this order, shall provide to the Board quarterly performance evaluations which shall address Respondent's mental condition and ability to practice the health profession with reasonable skill and safety, and shall include an evaluation and statement as to whether Respondent suffers from substance abuse and/or any mental or physical inability reasonably related to and adversely affecting the ability to practice in a safe and competent manner. The initial report shall be submitted to the Board at the end of the third month of probation, and subsequent reports shall be submitted every third month thereafter until the period of probation is terminated. If at any time, however, Respondent's employer finds that Respondent has a mental or physical inability which rendered Respondent unable to practice the health profession with reasonable skill and safety, said employer shall immediately submit a report to the Board which shall include such findings and related information.

C. Respondent shall notify the Board immediately regarding any changes of employment currently she is employed at Henry Ford Hospital, Detroit, as a nurse anesthetist.

D. Respondent shall submit to random testing of body fluids to ascertain the presence of drugs, as instructed by the Board or its authorized representative. The aforesaid tests shall be completed within a minimum period of eight (8) hours subsequent to the directive of the Board or its authorized representative, and a written report of said tests shall be filed with the Board within three (3) days subsequent to the test date.

E. Respondent shall continue her therapeutic program of controlled substances treatment as outlined by Oxford Institute, until released by said program.

IT IS FURTHER ORDERED that any violation of the Public Health Code, supra, by Respondent during said period of probation shall be deemed a violation of probation and constitute grounds for further disciplinary action by the Board.

IT IS FURTHER ORDERED that the timely filing of the reports as herein required shall be Respondent's responsibility, and the failure to file said reports within the time limitations herein provided shall be deemed a violation of an order of the Board.

IT IS FURTHER ORDERED that the aforesaid reports shall be mailed to the Board, c/o Licensing Coordinator, Office of the Health Services, Department of Commerce, P. O. Box 30018, Lansing, Michigan 48909.

IT IS FURTHER ORDERED that should Respondent violate any term or condition set forth herein, the Board may determine that Respondent has violated an order of the Board and proceed pursuant to 1980 AACPS, R 338.983, and section 16221 (g) of the Public Health Code, supra.

IT IS FURTHER ORDERED that this order shall be effective on the date signed by the Board as set forth below.

Signed by the Board this 24th day of November, 19

MICHIGAN BOARD OF NURSING

By Christine Zambricki, R.N.
Christine Zambricki, R.N.

I hereby approve the above order
as to form and substance.

Leon J. Weiss
Leon J. Weiss (P35996)
Attorney for Respondent

STIPULATION

NOW COMES the respective parties to stipulate and agree as
follows:

1. The allegations of fact contained in the aforesaid
complaint are true and constitute violation of section 16221 (a),
(b)(i), (b)(ii), (b)(iii) and (c)(iv) of the Public Health Code,
supra.


2. Respondent understands and intends that by signing this
stipulation Respondent is waiving the right pursuant to the Public
Health Code, supra, the rules promulgated thereunder, and the
Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL
24.201 et seq; MSA 3.560 (101) et seq, to require the People to
prove the charges set forth in the administrative complaint by
presentation of evidence and legal authority, and to appear with an
attorney and such witnesses as Respondent may desire to present a

defense to said charges before the Board or its authorized representative.

3. The foregoing consent order is approved by the respective parties and may be entered as the final order of the Board in said cause.

4. The foregoing proposal is conditioned upon its acceptance by the Board, the parties expressly reserving the right to further proceedings without prejudice should the consent order be rejected.

AGREED TO BY:


Howard C. Marderosian (P17080)
Assistant Attorney General
Attorney for the People
Dated: 12/17/91

AGREED TO BY:

Melissa Mary Kushmaul
Melissa Mary Kushmaul, R.N.
Respondent

Leon J. Weiss
Leon J. Weiss (P35996)
Attorney for Respondent

STATE OF MICHIGAN)
COUNTY OF OAKLAND) SS:

On the 13th day of DECEMBER, 1991, before me, a Notary Public in and for said county, appeared Melissa Mary Kushmaul, R.N., who, upon oath, states that she has read the foregoing consent order and stipulation by her subscribed, that she knows the contents thereof to be true, and that the signing of said consent order and stipulation is her free act and deed.

~~KATHLEEN G. TAYLOR~~
~~Notary Public, Oakland County, Michigan~~
~~My Commission Expires July 25, 1993~~

Notary Public

This is the last and final page of a consent order and stipulation in the matter of Melissa Mary Kushmaul, R.N., pending before the Michigan Board of Nursing and consisting of five (5) pages, this page included.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATION
BOARD OF NURSING

In the Matter of

MELISSA MARY KUSHMAUL, R.N., C.R.N.A./

ADMINISTRATIVE COMPLAINT

NOW COME the People of the State of Michigan, by Frank J. Kelley, Attorney General, by Assistant Attorney General Annette M. Jurkiewicz, and hereby file the within complaint against Melissa Mary Kushmaul, R.N., C.R.N.A., hereafter Respondent, alleging upon information and belief as follows:

1. Respondent is licensed as a registered nurse and is a certified registered nurse anesthetist.
2. At all times pertinent hereto, Respondent was employed at William Beaumont Hospital located in Royal Oak, Michigan.
3. Respondent has violated the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq, as follows:

A. During May of 1989, while working at the aforesaid hospital, Respondent diverted for her personal use an unknown quantity of Sublimaze, a schedule 2 controlled substance, by falsely charting the administration of said medication to patients and failing to administer same, in violation of law as currently set forth under section 16221(a), (b)(i) and (c)(iv).

B. During May of 1989 Respondent self-administered the aforesaid Sublimaze, in violation of law as currently set forth under section 16221(a), (b)(i), (b)(iii) and (c)(iv).

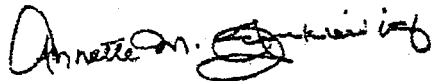
C. During May of 1989, while employed at the aforesaid hospital, Respondent diverted for her personal use an unknown quantity of Versed, a schedule 4 controlled substance, by falsely charting the administration of said medication to patients and failing to administer same, in violation of law as currently set forth under section 16221(a), (b)(i) and (c)(iv).

D. During May of 1989 Respondent self-administered the aforesaid Versed, in violation of law as currently set forth under section 16221(a), (b)(i), (b)(iii) and (c)(iv).

E. Respondent suffers from substance abuse in violation of law as currently set forth under section 16221(b)(ii).

WHEREFORE, the People request that the within complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the license. If compliance is not shown, the People further request that formal proceedings be commenced pursuant to the Public Health Code, supra, rules promulgated pursuant thereto, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq; MSA 3.560(101) et seq.

FRANK J. KELLEY
Attorney General


Annette M. Jurkiewicz (P-42275)
Assistant Attorney General
Health Professionals Division
P.O. Box 30212
Lansing, Michigan 48909

DATED: March 8, 1990

Telephone: (517) 373-1146

mlp/57/163

TRUE COPY
INVESTIGATION DIVISION
BUREAU OF HEALTH SERVICES
DEPT. OF LICENSING & REGULATION

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH PROFESSIONS
BOARD OF NURSING
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MELISSA MARY MONTELEONE, R.N., C.R.N.A.
License No. 47-04-160940

Complaint No. 47-10-117848

CONSENT ORDER AND STIPULATION

CONSENT ORDER

An Administrative Complaint was filed with the Disciplinary Subcommittee of the Board of Nursing on November 4, 2010, charging Melissa Mary Monteleone, R.N., C.R.N.A. (Respondent) with having violated sections 16221(a), (b)(ii), (b)(iii), and b(xi) of the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq.*

Based on Respondent's alcohol related convictions alleged in the Administrative Complaint and pursuant to section 16233(5) of the Public Health Code, the Department summarily suspended Respondent's license to practice as an R.N. or C.R.N.A. by Order dated November 4, 2010.

A hearing on a petition to dissolve the Order of Summary Suspension was conducted on December 6, 2010, during which the Respondent withdrew her request to dissolve the summary suspension and an Order continuing the summary suspension was entered with the consent of the parties.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH PROFESSIONS
BOARD OF NURSING
DISCIPLINARY SUBCOMMITTEE
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The parties have stipulated that the Disciplinary Subcommittee may enter this Consent Order. The Disciplinary Subcommittee has reviewed the Stipulation contained in this document and agrees that the public interest is best served by resolution of the outstanding Complaint. Therefore, the Disciplinary Subcommittee finds that the allegations of fact contained in the Complaint are true and that Respondent has violated sections 16221(a), (b)(ii), (b)(iii), and (b)(xi) of the Public Health Code.

Accordingly, for these violations, IT IS ORDERED:

The Order of Summary Suspension previously issued is DISSOLVED.

Respondent's license is SUSPENDED for a minimum period of six (6) months and one (1) day.

If Respondent petitions for reinstatement of her license, the petition shall be in accordance with sections 16245 and 16247 of the Public Health Code and 1996 AACRS, R 338.1635. Under these provisions, Respondent must demonstrate the following by clear and convincing evidence: (1) good moral character; (2) the ability to practice the profession with reasonable skill and safety; (3) satisfaction of the guidelines on reinstatement adopted by the Department; and (4) that it is in the public interest for the license to be reinstated.


Respondent may not file a petition for reinstatement sooner than ninety (90) days prior to the end of the suspension period.

If Respondent violates any term or condition set forth in this Order, Respondent will be in violation of 1996 AACRS, R 338.1632, and section 16221(h) of the Public Health Code.

This Order shall be effective on the date signed by the Chairperson of the Disciplinary Subcommittee or the Disciplinary Subcommittee's authorized representative, as set forth below.

Signed on 11/3/11

MICHIGAN BOARD OF NURSING

By 
Chairperson, Disciplinary Subcommittee

STIPULATION

The parties stipulate as follows:

1. Respondent does not contest the allegations of fact and law in the Complaint.

Respondent understands that, by pleading no contest, she does not admit the truth of the allegations but agrees that the Disciplinary Subcommittee may treat the allegations as true for resolution of the Complaint and may enter an order treating the allegations as true.

2. Respondent understands and intends that, by signing this Stipulation, she is waiving the right under the Public Health Code, rules promulgated under the Public Health Code, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq*, to require the Department to prove the charges set forth in the Complaint by presentation of evidence and legal authority, and to present a defense to the charges before the Disciplinary Subcommittee or its authorized representative. Should the Disciplinary Subcommittee reject the proposed Consent Order, the parties reserve the right to proceed to hearing.

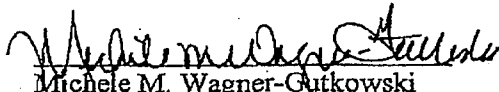
3. The Disciplinary Subcommittee may enter the above Consent Order, supported by Board conferee Mary Brown, R.N. Ms. Brown or an attorney from the Licensing and Regulation Division may discuss this matter with the Disciplinary Subcommittee in order to recommend acceptance of this resolution.

4. Ms. Brown and the parties considered the following factors in reaching this agreement:

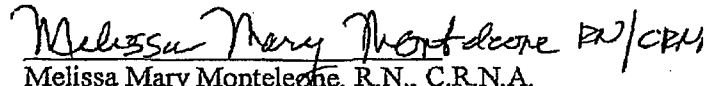
- A. At the present time, Respondent does not wish to resume practicing as a nurse.
- B. That Ms. Monteleone disputes some of the allegations in the Administrative Complaint and claims they are factually inaccurate.
- C. That Ms. Monteleone worked for 20 years as a nurse anesthetist with no complaints by her employer regarding performance.
- D. That during 2009 and 2010, Ms. Monteleone had several personal issues and life changing events in her life which caused her to relapse to alcohol abuse after nine and a half years of sobriety.
- E. That Ms. Monteleone has been sober since September, 2010, and remains under the supervision of the Royal Oak, MI Probation Department.
- F. That since her criminal convictions, Ms. Monteleone has completed inpatient therapy and intensive outpatient programs and continues to attend AA three to five times per week as well as group therapy in a weekly recovery group at Eastwood Clinic in Royal Oak, MI, and has never tested positive to any alcohol or drug test.
- G. That Ms. Monteleone advised she is committed to sobriety and has completed a four week 12 step workshop with her AA sponsor.
- H. Since her alcohol relapse, Respondent has completed 24 days of inpatient treatment, 2 intensive outpatient programs and is in compliance with the terms of her criminal probation.

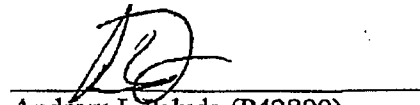
By signing this Stipulation, the parties confirm that they have read, understand and agree with the terms of the Consent Order.

AGREED TO BY:


Michele M. Wagner-Gutkowski
Assistant Attorney General
Attorney for Complainant
Dated: 9-30-11

AGREED TO BY:


Melissa Mary Monteleone, R.N., C.R.N.A.
Respondent
Dated: September 22, 2011


Andrew J. Paluda (P42890)
Attorney for Respondent
Dated: 9/22/11

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
BUREAU OF HEALTH PROFESSIONS
BOARD OF NURSING
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MELISSA MARY MONTELEONE, R.N., C.R.N.A.

f/k/a Melissa Mary Kushmaul

License Number: 47-04-160940

File Number: 47-10-117848

ORDER OF SUMMARY SUSPENSION

An Administrative Complaint has been filed against the above-named Respondent as provided by the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq, the rules promulgated thereunder, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq; and

After careful consideration of the documentation filed in said cause and after consultation with the Chairperson of the Board of Nursing pursuant to section 16233(5) of the Public Health Code, supra, the Department hereby finds that the public health, safety, or welfare requires emergency action; now therefore,

IT IS HEREBY ORDERED that Respondent's license to practice as a registered nurse in the state of Michigan shall be and hereby is SUMMARILY SUSPENDED, commencing the date this order is served.

Under 1986 AACR, R 338.10402, the suspension of a registered nurse license shall automatically cause the suspension of a specialty certification.

Under 1996 AACR, R 338.1610, Respondent has the right to petition for the dissolution of this order of summary suspension. This petition shall clearly state that it is a Petition for Dissolution of Summary Suspension and shall be filed with the Department of Community Health, Bureau of Health Professions, P.O. Box 30670, Lansing, MI 48909.

MICHIGAN DEPARTMENT OF
COMMUNITY HEALTH

Dated: November 4, 2010

By: Melanie B. Brim

Melanie B. Brim, Director
Bureau of Health Professions

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
BUREAU OF HEALTH PROFESSIONS
BOARD OF NURSING
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MELISSA MARY MONTELEONE, R.N., C.R.N.A.

f/k/a Melissa Mary Kushmaul

License Number: 47-04-160940

File Number: 47-10-117848

ADMINISTRATIVE COMPLAINT

NOW COMES the Michigan Department of Community Health, hereafter Complainant, by Melanie B. Brim, Director, Bureau of Health Professions, and files this complaint against Melissa Mary Monteleone, R.N., C.R.N.A., f/k/a Melissa Mary Kushmaul, hereafter Respondent, alleging upon information and belief as follows:

1. The Michigan Board of Nursing, hereafter Board, is an administrative agency established by the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq. Pursuant to section 16226 of the Public Health Code, supra, the Board's Disciplinary Subcommittee is empowered to discipline licensees for violations of the Public Health Code.

2. Respondent is currently licensed to practice as a registered nurse in the state of Michigan and holds specialty certification as a registered nurse anesthetist.

3. Section 16233(5) of the Public Health Code, supra, provides, in pertinent part, as follows:

After consultation with the chair of the appropriate board or task force or his or her designee, the department may summarily suspend a license or registration if the public health, safety, or welfare requires emergency action in accordance with section 92 of the administrative procedures act of 1969, being section 24.292 of the Michigan Compiled Laws.

4. "Substance abuse" is defined at section 6107 of the Public Health Code, supra, as follows:

...the taking of alcohol or other drugs at dosages that place an individual's social, economic, psychological, and physical welfare in potential hazard or to the extent that an individual loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare, or a combination thereof.

5. Fentanyl, Demerol, morphine and Sublimaze are schedule 2 controlled substances. Ativan, Versed, and Xanax are schedule 4 controlled substances. Benadryl is an over-the-counter medication.

6. On December 24, 1991, the Board issued a Consent Order and Stipulation, which placed Respondent on probation for a period of one year. The probationary terms required Respondent to continue aftercare treatment, submit employer reports, and submit to random drug screens. The disciplinary action was based on Respondent's diversion of Sublimaze and Versed from her employer for personal use.

7. In November 2009, Southeast Michigan Surgical Hospital, hereafter facility, in Warren, Michigan, initiated an investigation of Respondent due to discrepancies on medication pharmacy sheets. The facility's investigation revealed that Respondent was writing over previous documentation and using liquid correction fluid on facility pharmacy sheets to cover-up her diversion of fentanyl and Benadryl in September 2009 and October 2009. Consequently, Respondent was referred to the Health Professional Recovery Program, hereafter HPRP, for evaluation and possible non-disciplinary treatment monitoring.

8. On December 1, 2009, Respondent completed intake assessment. Respondent admitted falsifying facility pharmacy sheets and admitted to having chemical dependency issues with alcohol, fentanyl, Demerol, morphine, and Versed. Consequently, the HPRP directed Respondent to undergo an evaluation.

9. On December 17, 2009, Respondent submitted to the evaluation and was diagnosed with opioid dependence, alcohol dependence, and sedative hypnotic dependence. The evaluator determined that Respondent was not safe to practice as a nurse and recommended that Respondent enter an HPRP monitoring agreement.

10. On January 19, 2010, the HPRP mailed Respondent a non-disciplinary monitoring agreement for signature and return by February 2, 2010.

11. On January 25, 2010, Respondent informed the HPRP that she would be out-of-town visiting friends until February 5, 2010.

12. On February 1, 2010, Respondent informed the HPRP that she would return from visiting friends on February 15, 2010, instead of February 5, 2010.

13. On February 22, 2010, Respondent informed the HPRP that she was caring for her mother through the week. Respondent agreed to inform the HPRP when she returned home.

14. On March 8, 2010, with slurred speech, Respondent informed the HPRP that her automobile was being repaired, she lost her driver's license, and it would take a month to receive a new driver's license. Respondent further stated that she was unable to have the monitoring agreement notarized without photographic identification. When the HPRP confronted Respondent about the slurred speech, Respondent stated that she had taken Xanax.

15. On April 1, 2010, Respondent entered into a two-year, chemical dependency HPRP monitoring agreement. The terms of the monitoring agreement require, in part, that Respondent submit to random urine drug screens, meet with an addictionist and therapist, file monthly self-reports, and use only prescribed medications. Respondent was instructed to contact the drug testing facility to set up an account by April 12, 2010.

16. On April 13, 2010, the HPRP received notification from the drug testing facility that Respondent's speech was slurred and she was very confused during a telephone conversation. Consequently, the HPRP attempted to contact Respondent and her treatment providers without success. Subsequently, the HPRP mailed

Respondent a letter advising that she initiate contact with the HPRP and drug testing facility to set up an account by April 19, 2010, or risk file closure.

17. On April 21, 2010, the HPRP mailed Respondent a letter advising that the HPRP had decided to close her file for non-compliance and included the necessary paperwork for a Step 1 review due back by May 7, 2010. Specifically, Respondent had failed to initiate contact with the HPRP, drug testing facility, and treatment providers.

18. On May 5, 2010, the HPRP approved Respondent's Step 1 review to keep her file open and allow her the opportunity to bring her file into compliance.

19. On June 8, 2010, Respondent tested positive for alcohol on a random drug screen.

20. On or about, June 10, 2010, in the 44th Judicial District Court of Oakland County, Michigan, Respondent was convicted of Operating-Impaired, a misdemeanor. Respondent was sentenced to serve one day in jail, ordered to pay fines and costs totaling \$1,653.00, and was placed on probation for a period of 12 months with specified terms. (Respondent failed to notify the HPRP of this conviction.)

21. On June 16, 2010, the HPRP contacted Respondent's treatment providers to inquire about her participation, and learned that Respondent canceled her initial appointment with her individual therapist and missed group therapy on two

occasions. Respondent's therapist recommended an intensive outpatient treatment program, hereafter IOP.

22. On June 23, 2010, Respondent informed the HPRP that she had been treated in a local hospital emergency room following a seizure, and was prescribed a four-to-six day dose of Ativan. The HPRP requested that Respondent provide a copy of the hospital discharge forms for verification. Subsequently, Respondent provided the discharge forms to her therapist, which indicated that Respondent was diagnosed with an alcohol withdrawal seizure.

23. On June 25, 2010, Respondent failed to attend individual therapy and failed to contact and enter the recommended IOP program. Consequently, Respondent's therapist recommended immediate participation in an inpatient treatment program, instead of waiting until after July 19, 2010, as Respondent requested.

24. On June 30, 2010, the HPRP decided to close Respondent's file due to her non-compliance. Specifically, Respondent had relapsed twice since entering the monitoring agreement and failed to comply with treatment providers' recommendation for inpatient treatment. Subsequently, the HPRP mailed Respondent a letter advising that the HPRP had decided to close her file for non-compliance and included the necessary paperwork for a Step 1 review due back July 16, 2010.

25. On July 23, 2010, the HPRP sent Respondent a letter advising that her Step 1 appeal had been denied, and included the necessary paperwork for a Step 2 review due back by August 3, 2010.

26. On or about July 29, 2010, in the 41A Judicial District Court of Macomb County, Michigan, Respondent was convicted of Operating Impaired, a misdemeanor. Respondent was ordered to pay fines and costs totaling \$806.00, or serve 30 days in jail, and was placed on probation for a period of 18 months with specified terms. (Respondent failed to notify the HPRP of this conviction.)

COUNT I

Respondent's conduct and convictions, as set forth above, evidence a conduct, practice, or condition, which impairs, or may impair, the ability to safely and skillfully practice the health profession, in violation of section 16221(a) of the Public Health Code, supra.

COUNT II

Respondent's conduct and convictions, as set forth above, evidence substance abuse, in violation of section 16221(b)(ii) of the Public Health Code, supra.

COUNT III

Respondent's conduct and convictions, as set forth above, indicate that Respondent suffers from a mental or physical inability reasonably related to and adversely affecting Respondent's ability to practice in a safe and competent manner, in violation of section 16221(b)(iii) of the Public Health Code, supra.

COUNT IV

Respondent's convictions, as set forth above in paragraphs 20 and 26, constitute misdemeanor convictions that are reasonably related to or that adversely affect Respondent's ability to practice in safe and competent manner, in violation of section 16221(b)(xi) of the Public Health Code, supra.

WHEREFORE, Complainant requests that a hearing be scheduled pursuant to the Administrative Procedures Act of 1969, MCL 24.201 et seq; the Public Health Code, and the rules promulgated thereunder, to determine whether disciplinary action should be taken against Respondent for the reasons set forth above.

FURTHER, pending a hearing and final determination in the within cause, and pursuant to section 16233(5) of the Public Health Code, supra, Complainant states that the public health, safety and welfare requires emergency action and Respondent's license to practice as a registered nurse should accordingly be summarily suspended.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(7) of the Public Health Code, supra, Respondent has 30 days from the date of receipt of this complaint to submit a written response to the allegations contained herein. The written response shall be submitted to Complainant, Melanie B. Brim, Director, Bureau of Health Professions, Department of Community Health, P.O. Box 30670, Lansing, MI 48909.

RESPONDENT IS FURTHER NOTIFIED that, pursuant to section 16231(8) of the Public Health Code, supra, Respondent's failure to submit a written response within 30 days, as noted above, shall be treated as an admission of the allegations contained herein and shall result in transmittal of this complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

Dated: November 4, 2010

Melanie B. Brim

Melanie B. Brim, Director
Bureau of Health Professions

This is the last and final page of an Administrative Complaint in the matter of Melissa Mary Monteleone, R.N., C.R.N.A., f/k/a Melissa Mary Kushmaul, File Number 47-10-117848, before the Disciplinary Subcommittee of the Michigan Board of Nursing, consisting of nine pages, this page included.

LFM

Exhibit B
Final Order and Stipulation
State of Florida Board of Nursing

STATE OF FLORIDA
BOARD OF NURSING

Final Order No. DOH-11-3220-S -MQA

FILED DATE DEC 22 2011

Department of Health

By: *Angelo Sanders*
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2011-01286

License No.: RN 9168163

MELISSA MARY MONTELEONE,

Respondent.

FINAL ORDER

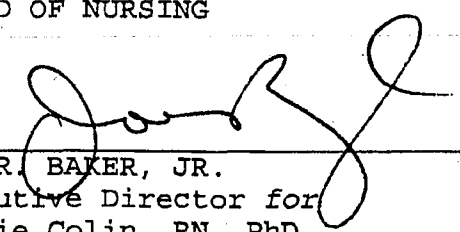
THIS CAUSE came before the BOARD OF NURSING (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on December 1, 2011, in Ft. Lauderdale, Florida, for the purpose of considering a voluntary relinquishment (attached hereto as Exhibit A). Petitioner has filed an Administrative Complaint seeking disciplinary action against the license. A copy of the Administrative Complaint is attached to and made a part of this Final Order as Exhibit B. Upon consideration of the voluntary relinquishment, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the voluntary relinquishment is accepted as a resolution of this case.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 21st day of Dec, 2011.

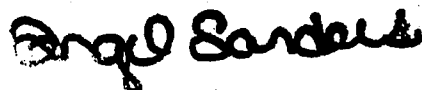
BOARD OF NURSING



JOE R. BAKER, JR.
Executive Director for
Jessie Colin, RN, PhD
Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to MELISSA MARY MONTELEONE, 10482 Hart Avenue, Huntington Woods, MI 48070; and by interoffice delivery to and by interoffice delivery to Lee Ann Gustafson, Senior Assistant Attorney General, Department of Legal Affairs, PL-01 The Capitol, Tallahassee FL 32399-1050, Jodi-Ann Johnson, Department of Health, 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399-3265 this 22nd day of December, 2011.



Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
Petitioner,

v.
MELISSA MARY MONTELEONE, R.N.,
Respondent.

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Melissa Nobles*
DATE 9/23/2011
DOH Case No. 2011-01286

VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent MELISSA MARY MONTELEONE, R.N., license No. 9168163, hereby voluntarily relinquishes Respondent's license to practice nursing in the State of Florida and states as follows:

1. Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this cause. Respondent understands that acceptance by the Board of nursing (hereinafter the Board) of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes. As with any disciplinary action, this relinquishment will be reported to the National Practitioner's Data Bank as disciplinary action. Licensing authorities in other states may impose discipline in their jurisdiction based on discipline taken in Florida.

2. Respondent agrees to voluntarily cease practicing nursing immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from the practice of nursing until such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written final order in this matter.

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3. In order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby waives the statutory privilege of confidentiality of Section 456.073(10), Florida Statutes, and waives a determination of probable cause, by the Probable Cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in the above-styled action. By signing this waiver, Respondent understands that the record and complaint become public record and remain public record and that information is immediately accessible to the public. Section 456.073(10) Florida Statutes.

4. Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Voluntary Relinquishment and of the Final Order of the Board Incorporating this Voluntary Relinquishment.

5. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

6. Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent in connection with the Board's consideration of this Voluntary Relinquishment. Respondent agrees that consideration of this Voluntary Relinquishment and other related materials by the Board shall not

prejudice or preclude the Board, or any of its members, from further participation, consideration, or resolution of these proceedings if the terms of this Voluntary Relinquishment are not accepted by the Board.

DATED this 16th day of September, 2011.

Melissa Mary Monteleone
MELISSA MARY MONTELEONE, R.N.
Melissa Monteleone

STATE OF FLORIDA
COUNTY OF:

Before me, personally appeared Melissa Monteleone, whose identity is known to me by Michigan Identification Card (type of identification) and who, under oath, acknowledges that his signature appears above. Sworn to and subscribed before me this 16th day of September, 2011.

A. COUNDELL
NOTARY PUBLIC

My Commission Expires:

June 01, 2014

A. COUNDELL
NOTARY PUBLIC - MICHIGAN
OAKLAND COUNTY
MY COMMISSION EXPIRES 06-01-2014
ACTING IN OAKLAND COUNTY

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2011-01286

MELISSA MARY MONTELEONE, R.N.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Nursing against Respondent, Melissa Mary Monteleone, R.N., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.

2. At all times material to this Administrative Complaint, Respondent was a licensed registered nurse (R.N.) within the state of Florida, having been issued license number RN 9168163.

3. Respondent's address of record is 10482 Hart Avenue, Huntington Woods, Michigan 48070.

4. On or about June 10, 2010, in the 44th District Court, in and for Oakland County, Michigan, Respondent pled guilty to one count of operating while impaired, in case number 10-RO-04015.

5. Respondent failed to report her plea described above in paragraph four (4) in writing to the Board of Nursing within thirty (30) days after the date Respondent entered the plea.

6. On or about July 19, 2010, in the 41A District Court, in and for Macomb County, Michigan, Respondent was found guilty of operating while impaired, in case number 10-416-OD.

7. Respondent failed to report this conviction described above in paragraph six (6) in writing to the Board of Nursing within thirty (30) days after the date Respondent entered the plea.

8. On or about November 4, 2010, the Michigan Board of Nursing filed an Order of Summary Suspension which suspended Respondent's nursing license.

9. The Michigan Board of Nursing is the licensing authority for registered nurses in the State of Michigan.

COUNT ONE

10. Petitioner realleges and incorporates paragraphs one (1) through nine (9), as if fully set forth herein.

11. Section 456.072(1)(x), Florida Statutes (2009, 2010), provides that failing to report to the board, or the department if there is no board, in writing within thirty (30) days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction constitutes grounds for disciplinary action.

12. As set forth above, Respondent failed to report to the Board in writing within thirty (30) days after Respondent:

- a. entered a plea of guilty to one count of operating while impaired, in case number 10-RO-04015;
- b. was found guilty of operating while impaired, in case number 10-416-OD.

13. Based on the foregoing, Respondent violated Section 456.072(1)(x) Florida Statutes (2009, 2010), by failing to report to the board, or the department if there is no board, in writing within thirty (30) days after the licensee has been convicted or found guilty of, or entered a

Department of Health v. Melissa Mary Monteleone, R.N.
Case Number 2011-01286

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plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.

COUNT TWO

14. Petitioner realleges and incorporates paragraphs one (1) through nine (9), as if fully set forth herein.

15. Section 464.018(1)(b), Florida Statutes (2010), provides that having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory or country constitutes grounds for disciplinary action.

16. As set forth above, Respondent had a license to practice nursing revoked, suspended, or otherwise acted against when the Michigan Board of Nursing filed an Order of Summary Suspension which suspended Respondent's nursing license.


17. Based upon the foregoing, Respondent has violated Section 464.018(1)(b), Florida Statutes (2010), by having a license to practice nursing revoked, suspended, or otherwise acted against, including the

denial of licensure, by the licensing authority of another state, territory or country which constitutes grounds for disciplinary action.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 2nd day of September, 2011.

H. Frank Farmer, Jr., MD, PhD, FACP
State Surgeon General


Casey L. Cowan
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar Number 0035536
(850) 245 - 4640 Telephone
(850) 245 - 4683 Facsimile

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Melisa Nobles
DATE 9/6/2011

/CLC

PCP: 9/2/2011

PCP Members: Horne & Horton

Department of Health v. Melissa Mary Monteleone, R.N.
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NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.